

Where do we draw the line?

Numerous attempts have been made to change the rules on abortion since it was legalised 40 years ago. **Jonathan Gornall** examines current arguments for reform

The 40th anniversary in October this year of the passing of the UK Abortion Act is certain to be marked by attempts to reopen the debate about lowering the upper limit for legal terminations. The anti-choice campaigners, quick to point out the uncomfortable resonance of the tally of six million “deaths” since 1967,¹ have already given notice of their optimistic ambition to halve the number of abortions, while in the House of Commons a Conservative MP is promoting a bill that would help them hit their more realistic target of lowering the upper limit from 24 weeks.

The pro-choice lobby has also come out fighting, denying the charge that abortion in the UK is, to all intents and purposes, available on demand—but suggesting that it ought to be. In an Ipsos MORI poll carried out in November for the British Pregnancy Advisory Service, the UK’s leading independent provider of abortions, 59% agreed that “abortion should be made legally available for all who want it.” In a pre-emptive strike Ann Furedi, the organisation’s chief

executive, called for an end to the “archaic” requirement for the approval of two doctors and proposed that abortions under nine weeks’ gestation should be carried out by nurses.

Legal challenges

The core aim of the anti-choice lobby remains the complete abolition of abortion, except when it is a matter of life or death for the mother. The reality, however, is that abortion has become so irreversibly entrenched in the nation’s social and medical culture that those opposed to it have had to put this ambition on the backburner and adjust their strategy.

The number of legal abortions in England and Wales doubled over the decade after the Abortion Act came into force in April 1968 and has since continued to rise steadily. In 1969, the first full year after the act, 54 819 legal abortions were carried out. In 2005, there were 194 353.¹

Nine anti-choice organisations—including the ProLife Alliance, LIFE, the Christian Medical Fellowship, and the Guild of Catholic Doctors—banded

together in September 2005 under the campaigning umbrella *Alive and Kicking*. Two of its three main objectives—an end to what it calls “discriminatory” legal abortion up to birth for reasons of physical or mental abnormality and a halving of the annual total of abortions—are almost certainly beyond reach. In 2005, only 1916 abortions were carried out under statutory ground E, where there is substantial risk of giving birth to a child with serious physical or mental handicap, and only 137 of these were carried out past 24 weeks’ gestation.

Halving the total number of abortions by reducing the upper time limit also seems ambitious. In 2005, 89% of all abortions were carried out at under 13 weeks’ gestation and 67% at under 10 weeks. To cut the total in half, the upper time limit would have to be cut from 24 weeks to below nine.

With its third objective, however—to achieve “an immediate, substantial” reduction in the upper limit for legal abortion—

Alive and Kicking stands a slender chance of success, and it is on this narrow, controversial ground that



much of the battle over abortion is being fought.

In a purely statistical sense, fighting to reduce the limit by two, three, or even four weeks—and achieving anything more would almost certainly prove impossible in one jump—is a futile battle. In 2005, of the 186 416 abortions carried out on residents of England and Wales, only 2500 (1.3%) took place between 20 and 23 weeks.

However, although the numbers are small, the stakes are high for doctors, patients, and children. Any challenge to the upper limit of 24 weeks poses big questions about viability, infant suffering, and the capabilities of neonatal care—and the danger is that this vital debate is taking place increasingly on sentimental rather than scientific grounds.

Party politics

One of the key members of the *Alive and Kicking* campaign is the ProLife Alliance, which can take much of the credit for having put abortion back on the public and political agenda over the past decade. The organisation was set up in 1996 as a political party, fielding candidates in the 1997 general election for the sole purpose of using its five minutes of election broadcast to show “the reality of abortion.” Broadcasters refused to show the images of aborted babies, and the ensuing five year legal battle ended in defeat for the alliance in the House of Lords.

The alliance was also behind the ultimately failed attempt in 2003 by Joanna Jepson, a trainee vicar, to have police prosecute two doctors over the late abortion in 2001 of a fetus with a cleft lip and palate. “The legal challenge was identified by us,” Julia Millington, political director of ProLife Alliance, told the *BMJ*. “Joanna was asked if she would take the case forward, partly because she had had a congenital jaw deformity herself that was corrected by surgery.”

Although no prosecution was brought, the Jepson case was another propaganda victory for ProLife Alliance: “The public reaction to that case was very significant,” said Ms Millington. “It received a huge amount of publicity and I think people were genuinely shocked and concerned that we would allow abortion at 28 weeks simply because a fetus had a cleft lip and palate.”

The fetus is its own advocate in this debate and the abortion limit is going to come down, I'm 100% certain

On the other hand, says Wendy Savage, of Doctors for a Woman's Choice on Abortion, others “were shocked at the invasion of the woman's privacy for political ends.”

Moving images

Now, however, the alliance has moved on, deregistering itself as a political party and turning its attention away from pictures of dead babies to the far more media friendly 4D ultrasound images of live ones in the womb.

The publicity generated by Jepson's judicial review coincided with widespread media coverage in 2003 of images secured by 4D ultrasound scanning. The technique was pioneered by Stuart Campbell, former head of obstetrics and gynaecology at St George's Hospital, London, and the images were embraced enthusiastically by anti-choice groups: “We can't believe that anybody could continue supporting abortion when they see these extraordinary pictures,” commented the alliance at the time, while the *Evening Standard* reported that the procedure had revealed “unborn children sucking their fingers, blinking and even crying in the womb, long before the 24-week legal limit for terminations” and had reopened debate “over feelings of unborn children.”²²

Professor Campbell told the *BMJ*: “I am not anti-choice, except in the best sense of the word.” But in an article for the *Daily Telegraph* in October 2006, he wrote: “Between 20 and 24 weeks we watch as they seem to cry, smile and frown.” The paper's headline writer, however, was a little less equivocal: “Don't tear a smiling foetus from the womb.”²³

Professor Campbell says that what he has seen with 4D scanning has convinced him the maximum age for legal abortion should be cut to 18 weeks, although he believes that this is unlikely and he would “settle for 20 weeks.” He is convinced that his 4D images have undermined the validity of the current time limit for abortion.

“I don't think there's any doubt that it has raised people's awareness of the humanity of the fetus,” he said. “The fetus is its own advocate in this debate and the abortion limit is going to come down, I'm 100% certain.” The pro-choice lobby, he said, accuse him of sentimentalising the argument, “but I'm not just somebody who takes pretty pictures and who gets all sentimental. I can show you a



fetus with his face twisted in a cry at 22 weeks. Now people say that's just a reflex, but how do they know? How do they know it's not demonstrating some internal response to something in the environment?”

Fetal neurobiology

However, Maria Fitzgerald, professor of developmental neurobiology at University College London and scientific director of the WellChild Pain Research Centre, says: “The 4D images are completely unhelpful and completely misunderstood.” There is, she says, “very good evidence that fetuses go through a series of pre-programmed movements that look like stretches and yawns. People infer upon them a lot of emotional baggage, but it doesn't mean that the fetus is conscious or feeling things like you or I would feel.”

Professor Fitzgerald is scathing of the pro-life movement's suggestion that because improved neonatal intensive care means that some extremely premature babies can be kept alive at 23 weeks, it is wrong to allow abortion at the same age. It is, she says, simply wrong to compare a baby in intensive care with a



HAROLD CHAPMAN/TOPFO

DAILY TELEGRAPH

Don't tear a smiling foetus from the womb

There is something deeply moving about the image of a baby cooed inside the womb. When four-dimensional scans first became available three years ago, I sat with parents who trembled at the sight of their soon-to-be newborn. They told me they wanted to stroke its downy head. Advanced scanning means we have a window on the secret life of foetuses. At 11 weeks we can see them yawn, and even take steps. At 22 weeks, they begin to

Of course, I have been accused of "sentimentality". Maybe this is right, but I defy anyone to see these pictures and not pause to wonder if they might be wrong. With the 1967 Abortion Act, terminations could be performed up to 28 weeks for "social" abortions. In 1990, the law was changed to 24 weeks. At that time, a baby born at 23 weeks had less than a 10 per cent chance of survival. Now, it has a 66 per cent chance and we must change the law again.

We should not abort foetuses that can flinch, wince and frown, argues Professor Stuart Campbell

Why, if there is scientific evidence to prove their brains are too under-developed to feel pain or distress, would they be given medication to protect them from pain? And if we accept that these babies may feel pain, why would we feel the same sensation inside the womb? I know if I gently push a baby in the womb at 28 weeks, it will make a crying face because it has been disturbed. How can we tell so precisely the point at which

babies born at 22 weeks will live. Those casting doubt on whether a smile is really a smile are, in my opinion, defending the indefensible. If a baby has reached a stage where it could survive in a neo-natal unit, then the pregnancy shouldn't be terminated for social reasons. And we must focus on terminations for social reasons if we are talking about amending the law. There are 1,200 terminations a year between 22 and 24 weeks, 70 per cent of

Clockwise from top left David Steel MP, whose private member's bill led to the 1967 Abortion Act; Women in London protesting against the abortion amendment bill in 1970; The *Daily Telegraph* wades into the debate with an article by Professor Stuart Campbell, the pioneer of 4D ultrasound scanning; Nadine Dorries MP has pledged to keep her bill to reduce the upper limit of abortion "live on the order paper every day until it happens"

fetus of identical gestational age and to suggest that the fetus might feel pain in the same way as the born child.

"There is a major confound, which is of course that the fetus is not an independent living creature like a baby in intensive care," she says. "People don't listen. We keep on saying this, but there is this obsession that a pre-term infant in intensive care is the same as a fetus, but it isn't. A terrible error that a lot of people make is that there is a continuum, as if birth is just a kind of minor event that happens along the way, but actually it's an enormous physiological event."

Professor Fitzgerald points to a paper published in 2005 that challenged the "uncritical view that the nature of presumed fetal pain perception can be assessed by reference to the prematurely born infant."⁴ David Mellor and colleagues in New Zealand documented the role of neuroinhibitors produced "within the fetoplacental unit that contribute to fetal sleep states, and thus mediate suppression of fetal awareness." Such inhibitors include pregnanolone, which has anaesthetic, hypnotic, and sedative properties.

Viability

But whether or not fetuses feel pain in the same way as infants, another debate is raging over the survival rates of extremely premature infants and the viability of such survivors. "In 1967," says Professor Campbell, "28 weeks was regarded as the upper limit of viability. Now certainly at 23 weeks we expect a high percentage to survive. Obviously some will be handicapped, but that's not the issue."

For many in medicine, however, including the BMA, such questions of viability are precisely the issue. Although neonatal care has undoubtedly advanced over the past 40 years, the BMA points out that "the extent to which these advances have significantly changed our understanding of the gestational age of fetal viability, however, depends to a considerable extent on how 'viability' is defined."⁵

The BMA's position remains that 24 weeks is the correct upper limit for abortion and cites the findings of the Nottingham EPICure study, which was set up to address the absence of data on survival and long term outcome for extremely premature infants. EPICure evaluated all children born at 20 to 25 weeks'

gestation in the UK and Ireland between March and December 1995 and assessed the survivors at discharge and again at 2.5 and 6 years old.

Among the 4004 births identified, only 1185 of the babies had shown signs of life. Of these, 843 were admitted to neonatal intensive care units, while the remainder died in the delivery room. What's more, the EPICure researchers concluded in their 2000 report, "Severe disability is common among children born as extremely preterm infants and remains a major challenge in this group."⁶

Of the 382 babies born live at 24 weeks, 84 (22%) died in the delivery room; 298 were admitted to a neonatal intensive care unit, of whom 198 (52%) died and 24 were left with severe disability. At 23 weeks, 110 (46%) of the 241 babies died before admission to neonatal intensive care and just 26 survived to discharge. Eight of these had severe disability.

The survival rate at 22 weeks' gestation was even worse, with only two of the 138 babies leaving hospital, one of whom had severe disability.

In 2005, the group published a follow-up paper that looked at the same children at the age of 6 years.⁷ They found disabling cerebral palsy in 30 children (12%) and severe, moderate, and mild disability in 22%, 24%, and 34% respectively. Among children with severe disability at 30 months, 86% still had moderate to severe disability.

Resuscitation

In November last year, the Nuffield Council on Bioethics entered the abortion debate when it issued its guidelines on when to give intensive care to extremely premature babies.⁸ Its proposals came as a disappointment to anti-abortion campaigners.

Between 23 weeks and 23 weeks six days, said the report, "it is very difficult to predict the future outcome for an individual baby." In the matter of resuscitation and intensive care, precedence should be given to the parents' wishes, but "when the condition of a baby indicates that he or she will not survive for long, clinicians are not legally obliged to proceed with treatment wholly contrary to their clinical judgement."

Between 22 weeks and 22 weeks and six days, resuscitation should be carried out only if parents request it "after thorough discussion with an experienced paediatrician." Below 22 weeks, "no baby should be resuscitated."

The anti-choice campaigners, however, were not impressed that the Nuffield working party, like the BMA, had relied for its assessments of borderline viability on the findings of the EPICure study. For one thing, they argued, the EPICure findings were a decade out of date.

"The Epicure study was a multicentre study that produced, in effect, lowest common denominator figures," Peter Saunders, general secretary of the Christian Medical Fellowship, told the *BMJ*. "Given that the Nuffield report says survival improves by one week every decade, the figures for survival for 22, 23, and 24 weeks are probably pretty cautious. In the best units in the UK and abroad, the survival rates of 23 and 24 week babies are closer to 50% and 80% respectively."

For Ellie Lee, a lecturer in social policy at Kent University and founder and coordinator of the Prochoice Forum, the debate about viability is a red herring designed to draw attention away from the central question of women's rights. "It's one thing to say that you should use these data to guide the practice of doctors in hospitals who are trying to help parents who have given birth to very premature babies," she said, "and quite another to say we should use this to develop a moral argument about when abortion should be available."

She believes that the anti-choice focus on the question of viability exposes the insincerity of the movement's recent attempts to recruit to its cause quasi-feminist issues of women's health and rights. "They are trying to hook an antiabortion perspective on to

something modern, medical, and scientific, such as the claim that there is a psychiatric condition called post-abortion syndrome. They are attempting to use the distress women feel to generate a legal strategy to undermine the provision of abortion."

Not so, says Ms Millington of the ProLife Alliance. "Our concern has always been for both the mother and the baby, but we are discovering more and more about the impact of abortion and the negative psychological consequences for women. As medicine progresses and we learn more there will be a need to make changes to the law to give women more information."

Women's health

In 2005, 95.6% of abortions were carried out under category C, which allows for legal abortion under 24 weeks on the ground that continuing with the pregnancy poses a greater risk to the physical or mental health of the woman than having an abortion. Category C, say the anti-choice campaigners, amounts to abortion on demand, but they also see it as the act's Achilles' heel. The widely accepted medical opinion, as summed up by the Royal College of Obstetricians and Gynaecologists, is that: "For most women an abortion is safer than carrying a pregnancy and having a baby."⁹ The anti-choice lobby believes that if it can undermine this tenet, then the law would have to change.

Various studies have sought to show physical risk to women as a consequence of abortion, including increased risk of very preterm delivery in subsequent pregnancies¹⁰ and breast cancer.¹¹ Most recently, however, the anti-choice lobby has been emphasising the risk of psychological consequences for women who have abortions. A longitudinal study by David Fergusson and colleagues in New Zealand

tracked some 500 women up to age 25 and found that those who had had abortions had higher rates of depression, suicidal behaviour, and other mental problems that could not be explained by conditions that existed before the pregnancy.¹² The findings, the authors concluded, "suggest that abortion in young women may be associated with increased risks of mental health problems."

The authors had, of course, been careful to use the qualifying word "may." What's more, they had studied women only under 25, who in 2005 accounted for less than half the total number of those who had abortions in England and Wales. Furthermore, as the Prochoice Forum was quick to point out, "The most valid comparator group to women who have abortion is women with unwanted pregnancy who are denied abortion and then give birth," and the New Zealand study used no such comparison.¹³

The position of the royal college remains that while some studies "suggest that rates of psychiatric illness or self harm are higher among women who have had an abortion ... these findings do not imply a causal association and may reflect continuation of pre-existing conditions." What's more, it says, abortion is not associated with breast cancer or future productive outcome.⁹

Prospects for change

If the upper limit for abortion is reduced this year, it seems it will be in response to public opinion informed not by scientific and medical realities but by sentimental pictures—and on the back of occasionally misleading polls.

A YouGov survey carried out for the *Daily Telegraph* in 2005 posed the curiously loaded question: "At the moment abortion is legal in Britain up to the 24th week of pregnancy. However, doctors can now save the lives of premature babies born as early as 23 weeks.

Why shouldn't abortion be treated like any other operation, where the doctor gives you the information and you make an informed choice...?

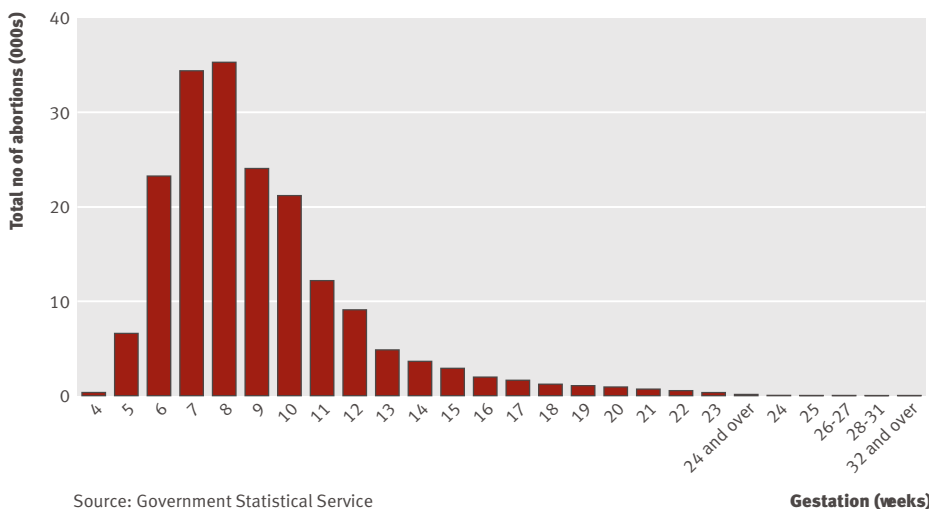
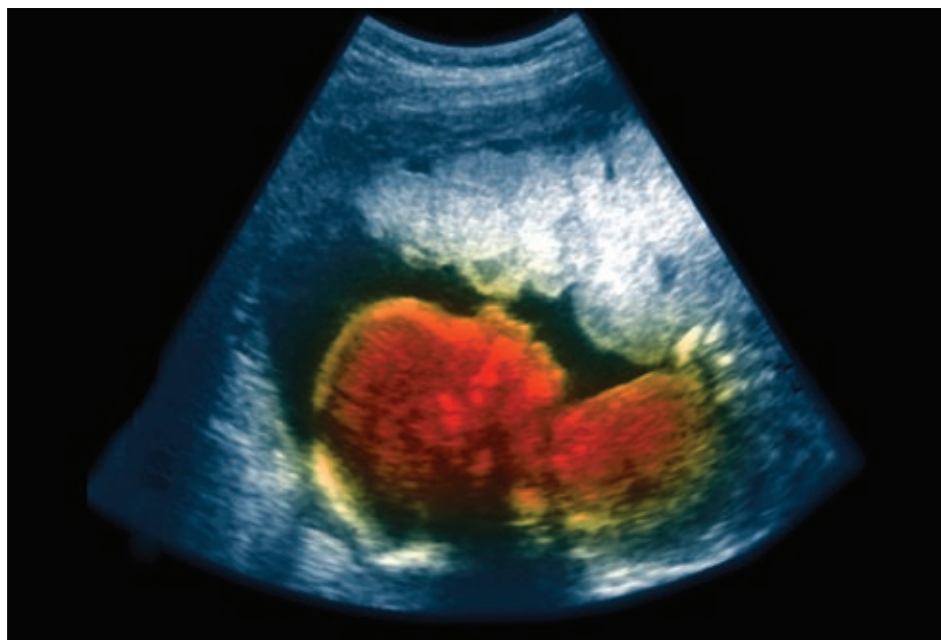


Figure 1 | Number of abortions in England and Wales in 2005 by week of gestation



SCOTT CAMAZINE/SPL

Ultrasound scan showing a fetus at twenty weeks

From what you know, what do you think the legal limit for abortions should be?" Faced with this, 30% said up to 20 weeks, while only 25% were happy with 24.

Perhaps more convincingly, however, in an Ipsos MORI poll conducted for the British Pregnancy Advisory Service in November last year support for the proposition that abortion should be made legally available for all who wanted it fell to 59% from 64% in 1997, with 27% in opposition. A majority supported 24 weeks as the limit, but the poll suggested that opinion about the acceptability of abortion on the ground of disability might be changing, with support down from 70% in 2001 to 64%.

Most significantly of all, however, given that any change to the law must, by tradition, come not from the government but from a backbencher, a Communicate Research poll of 154 MPs for *Alive and Kicking* in June 2005 found that 63% thought the 24 week limit should be reduced—a substantial increase from 37% in 2004. What's more, 57% had seen, heard, or read about Professor Campbell's 4D ultrasound images and, of them, 31% admitted to having been swayed by them.

Private member's bill

One of those swayed was Nadine Dorries, the Conservative member for Mid-Bedfordshire whose 10 minute rule bill to reduce the abortion limit to 21 weeks was rejected last October by 187 votes to 108. Mrs Dorries, who describes herself as a practising Christian, was not discouraged and has put the bill down for a second reading on 23 March. She has

also lowered her proposed upper limit from 21 to 20 weeks, wants "a period of informed consent introduced, and aims to see abortions reduced by half. Although three private members' bills are in line ahead of it on that day and Mrs Dorries knows her bill stands only an outside chance of being debated, she says she will continue to present it. "If you don't strike, you can't score, so I'm going to keep it live on the order paper every day I'm an MP until it happens."

Mrs Dorries's bill seems to represent the anti-choice lobby's best chance of lowering the upper limit of abortion in the act's anniversary year. It will be of some concern to professionals that her position seems to reflect the ethical and medical confusion that threatens to overwhelm clear debate in the year ahead.

Mrs Dorries, a trained nurse, told the *BMJ* she had been influenced "very much" by meeting Professor Campbell and by the findings of Fergusson and colleagues' study. Mrs Dorries also says she feels strongly about feticide, whereby, in accordance with royal college guidance, intracardiac potassium chloride is administered for terminations at or over 22 weeks to ensure that the fetus is born dead. "Clearly," says Mrs Dorries on her website, "this is a barbaric practice and I will not stop campaigning until it is outlawed."¹⁴

There is something of a contradiction here with Mrs Dorries's experience of having assisted on a late abortion seemingly conducted without feticide. The MP told the *BMJ* that in 1976, when she was a 19 year old trainee nurse, she had assisted on a possibly illegal late abortion on the daughter of a friend

of a consultant. It resulted, she says, in a live birth.

"It was a ghastly experience," she said. "I saw it breathe. If we'd used some suction, it would have lived. That has stuck with me."

Mrs Dorries, said Dr Lee, is attempting to use the "yuk factor" to generate opposition to late abortion. "Where people have a genuine concern to eradicate so called 'botched abortions,' and the distress this causes to both medical staff and women undergoing late abortion, they argue that those who perform abortions after 21 weeks need to be trained to the highest possible standards, including in the technique of feticide," she said.

"It would be far more honest, and frankly comprehensible, if Mrs Dorries just stated she thinks abortion should be illegal, however it is performed."

For Professor Savage, the time has come "to look beyond just tinkering with the bill. Forty years after the law was changed, why shouldn't abortion be treated like any other operation, where the doctor gives you the information and you make an informed choice about whether you undergo surgery? We need to move the focus from the fetus to the woman."

Competing interests: None declared.

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